73-716

FILED
MAY 9 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

NO. 73-16

ROY D. GARNER,

Petitioner.

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

BURTON MARKS, ESQ.
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NO. 73-16

ROY D. GARNER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

This is a Petition for Rehearing of the Order of this Court dated April 15, 1974, denying the Petition for Certiorari.

REASONS FOR GRANTING REHEARING

The Memorandum of the United States in Opposition to the Petition for Certiorari (which was filed after notice from the Clerk of this Court that no response had been filed) sets out as a plea in abatement that Petitioner's underlying conspiracy conviction had been reversed by a Panel of the Ninth Circuit Court of Appeals, *En Banc*, and that rehearing had been granted and was still pending before the Ninth Circuit Court of Appeals.

On April 11, 1974, the Court of Appeals, in a seven to five decision, *affirmed* the Judgment of Conviction of the Petitioner herein (*Roy D. Garner v. United States of America*, CA9 number 71-1219).

A Petition for Rehearing/Reconsideration has been timely filed with the Court of Appeals. If that Petition is not granted, a Petition for Writ of Certiorari will be filed with this Court to review the very important and novel question heard and decided by the Ninth Circuit *En Banc*.

CONCLUSION

If this Honorable Court denied Certiorari on the basis recommended by the Solicitor General, to wit: that the case in controversy is not ripe for decision, then, it is submitted that the change in the decision of the Court of Appeals for the Ninth Circuit from reversal of the Defendant's conviction to an affirmance of his conviction places the Petitioner in serious jeopardy of being placed in jail upon a revocation of bail based upon the use of evidence and property unlawfully seized from the Defendant. The questions posed in the

original Petition for Certiorari are therefore ripe for decision by this Court.

Incidentally, no criminal charges have ever been filed against the Defendant, ROY D. GARNER, arising out of the seizure of materials in New York. Notwithstanding this fact, the Government has refused to return the private property of this Petitioner to him.

For the reasons aforestated, the Petition for Writ of Certiorari should be granted by this Court.

DATED: May 7, 1974.

Respectfully submitted,

BURTON MARKS

Attorney for Petitioner

CERTIFICATE OF COUNSEL

The undersigned counsel does hereby certify that this Petition for Rehearing is brought in good faith and not for the purpose of delay, and is a result of intervening circumstances which are set forth in the body of the Petition.

Petition is a member of the Bar of this Court

DATED: May 7, 1974.

BURTON MARKS

Attorney for Petitioner

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is

8383 Wilshire Boulevard, Suite 510, Beverly Hills, California.

On May 7, 1974, I served the within PETITION FOR REHEARING on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Beverly Hills, California, addressed as follows:

3 COPIES
SOLICITOR GENERAL OF THE UNITED STATES
U. S. Department of Justice
Washington, D. C. 20530

2 COPIES
UNITED STATES ATTORNEY
CENTRAL DISTRICT OF CALIFORNIA
1200 United States Courthouse
312 N. Spring Street
Los Angeles, California 90012.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 7, 1974, at Beverly Hills, California.

ELLEN BERLIN

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326½ Main Street, Huntington Beach, California 92648, and I am a printer engaged in printing and filing appellate briefs for attorneys in the Orange County and Los Angeles areas.

On MAY 16 1974, I prepared copies of a Petition for Rehearing in the matter of Roy D. Garner vs. United States of America, Supreme Court Case No. 73-16, and am herewith forwarding 41 COPIES of said document to the UNITED STATES SUPREME COURT. It is my understanding that the original signed copy of this document is now on file with the Supreme Court and that copies thereof were forwarded as indicated on the Proof of Service by Mail as signed by Ellen Berlin and reproduced herein.

D. A. Standefer